BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

Joint Application of Wisconsin Electric Power Company and Wisconsin Gas LLC for Authority to Adjust Electric, Natural Gas, and Steam Rates — Docket No. 5-UR-110

OBJECTIONS OF WALNUT WAY CONSERVATION CORP. AND CLEAN WISCONSIN TO JOINT APPLICANTS' PROPOSED SETTLEMENT

INTRODUCTION

Pursuant to the schedule agreed upon by the parties (PSC Ref.#449326) Walnut Way Conservation Corp. ("Walnut Way") and Clean Wisconsin (collectively, "Non-Settling Parties") hereby object to the Joint Applicants' Proposed Settlement (Ex.-WEPCO WG-Settlement Agreement) (hereinafter, "Settlement Agreement").

The Non-Settling Parties' objections, which are more particularly stated below, are founded in the Settlement Agreement's failure to address some of the most pressing issues in this docket. First, it fails to provide sufficient relief to low-income and payment troubled residential customers, and the limited relief it contains does not go far enough. Second, it fails to mitigate the large rate increases WEPCO and Wisconsin Gas ("Applicants") seek from residential customers by offering more energy efficiency and other programs.

Third, the Settlement Agreement was a failure of process, both as it relates to equity and the level of information available at the time of the settlement. Walnut Way, a first-time intervenor which represents the interests of predominately low- and moderate-income and minority residents in the Lindsay Heights neighborhood and elsewhere, was not included in settlement discussions, but rather was presented with the agreement after it was a fait accompli. Clean Wisconsin was similarly ignored. Unfortunately, this lack of

inclusion continues a pattern of Applicants' dismissiveness of Walnut Way and its constituents throughout this proceeding, including its failure to engage with Walnut Way's expert testimony. Applicants similarly failed to engage with Clean Wisconsin's testimony regarding performance incentive mechanisms for energy efficiency. Also, the Settlement Agreement was finalized before the full scale of the proposed increase on electric and gas rates for residential customers was fully known. As it turns out, and based on the Applicants' change in position on revenue allocation, the projected 8% increase in electric bills has now become a 13% increase, along with increases in gas bills. (*Compare* Ex.-WEPCO WG-Eidukas-SA2, Schedule 11 *with* Ex.-WEPCO/WG-Nelson-10.)[1] This lack of information undoubtedly hindered the settlement process and final product.

The Settlement Agreement, as written, does not satisfy the criteria in Wis. Stat. § 196.026(b) or (c). The Commission should not approve it, or if it does, it should only approve the Settlement Agreement with significant modifications that reduce energy burdens to residential customers now—when Applicants' increases go into effect—and in the future. Wis. Stat. § 196.026(8).

LEGAL BACKGROUND

Wis. Stat. § 196.026 was enacted by the Legislature to ensure that settlement agreements provide for a fair and just resolution of all conflicts in a docket. This includes requirements that every party has a reasonable opportunity to present and defend a position on the settlement and the parties who sign the settlement agreement adequately represent the public interest. Before approving any settlement, the Commission must conclude that it "represents a fair and reasonable resolution to the docket, is supported by substantial

[1] Applicants' change in position is discussed more extensively in Walnut Way's and Clean Wisconsin's reply briefs (PSC Ref.#449856, 449849), which are incorporated herein by reference.

evidence on the record as a whole, and complies with applicable law, including that any rates resulting from the settlement agreement are just and reasonable." Wis. Stat. § 196.026(7)(c). The Commission may approve a settlement agreement "in whole or in part and with the conditions deemed necessary by the Commission." *Id.* § 196.026(8). Any issues not settled may be decided by the Commission "in accordance with applicable law and procedure." *Id.*

DISCUSSION

I. Objections to the Settlement Agreement

The Non-Settling Parties object to the Settlement Agreement, both for the things it says, and the things it does not say.

A. Objections to Specific Provisions

Regarding those things the Settlement Agreement addresses, the Non-Settling Parties have the following objections.

First, and overall, and if Applicants' ROE and revenue allocation is accepted, the Settlement Agreement results in residential electric bill increases of $14.61 per month or $175.31 per year. (SA-Direct-WW-Colton-2 to 3; Ex.-WW-Colton-SA1). Customers who take both natural gas and electric service from Applicants would have an even more substantial increased bill. (*Id.*; *see also* Ex.-WW-Colton-SA2, Ex.-WW-Colton-SA3.) "[T]he average income of households in the First Quintile of Income for Milwaukee was $9,211," meaning the Settlement Agreement "would result in an increased electricity burden of nearly 2% per year attributable *just to the increase in bills* proposed by the Settlement ($175.31/$9,211 = 0.019)." (SA-Direct-WW-Colton-3.) "Given a total affordable energy burden of 6%, and thus an electric affordable energy burden of either 3% or 4% (Direct-

WW-Colton-r at 69), the bill *increase alone*. . . would be between one-half and two-thirds the electric burden deemed to be affordable." This of course harms the many constituents and members of the Non-Settling parties who cannot afford the increases, adversely affecting the Non-Settling Parties.

Similarly, the Settlement Agreement permits a $507.2 million revenue increase without fuel, adding back certain exclusions from the staff audit. (Ex.-WEPCO WG-Settlement Agreement, Exhibit A at 1.)[2] If this portion of the Settlement Agreement is approved, it removes the Commission's discretion to set revenue at a lower level, which would in turn lower the significant bill increases the Applicants request. In other words, the Settlement Agreement harms residential customers (including members and constituents of the Non-Settling Parties) by not setting the residential requirement lower and depriving the Commission of one tool in its toolbox to address Applicants' excessive rates. The Non-Settling Parties agree with the COVID Write Off included in the proposal, however.

Second, while the Settlement Agreement extends the Low Income Forgiveness Tool ("LIFT") until the next rate review filing (Ex.-WEPCO WG-Settlement Agreement, Ex. A at 2), it conflicts with Walnut Way's extensive testimony about this arrearage management program in three key ways:

- Applicants should expand eligibility for LIFT, which currently is limited to those receiving energy assistance within the last year, among other criteria. This "severely limits the low-income population which can enroll in LIFT," both because only a fraction of people eligible for energy assistance are actually enrolled, and because the

[2] Walnut Way also noted some questionable expenses for which Applicants seek rate recovery in its opening brief. (WW Br. at 16.)

number of people receiving energy assistance comprises a small portion of Applicants' customers. (Direct-WW-Colton-r-103.) Walnut Way expert witness Colton thus recommended expanding eligibility for the LIFT program to persons enrolled in the Supplemental Nutrition Assistance Program (SNAP, formerly known as food stamps). (*Id*. at 104-107.) Public comments support this sentiment, with many commentors complaining that they earn too much money to be eligible for energy assistance but still struggle with utility bills. For example:

> For a long time a simple goal of mine was to live on my own. No roommates, not having to rely on a significant other, and I finally achieved that goal 3 years ago when I moved to Waukesha.
>
> I am on the budget plan with WE energies, so that my bill is the same amount every month, and it has gone from $76, to $95, to $103. I live by myself in a one bedroom apartment. I can NOT afford another increase in utilities. I pay for my own heat and hot water in my unit.
>
> WE energies saw billions in profits over the last couple years, even through the pandemic while others struggled. They have monopolized the industry so people have literally no other choice for an energy provider in the greater Milwaukee area. It makes no sense to allow them to increase their rates when they are already increasing them on people over the years. Literally nobody knows how to read their energy bill because it isn't made for you to do so. **I have no idea what they are charging me for, or why my bill is almost $30 a month higher than when I signed up, but I literally have no choice. What am I supposed to do if I can't afford more than that but I don't qualify for things like energy assistance?**

(Public Comment of Kayla Thomas, PSC Ref.#448736 (emphasis added)); *see also* Public Comment of Alma Varela, Milwaukee, PSC Ref.#448736 ("I would like the committee [to] consider if we are in the class were too rich to be poor and too poor to be rich[, therefore] we qualify for no energy assistance," and "how about arise the poverty level so some of us work class families can qualify for We energy programs")). These sentiments are also echoed in the settlement

testimony of Walnut Way Executive Director Antonio Butts, filed herewith. (SA-Direct-WW-Butts-8.)

- Applicants should incorporate the LIFT program, as modified, into its permanent tariffed rates and regulations. (Direct-WW-Colton-107.)
- Applicants should make service rule changes that incorporate certain practices and procedures regarding deferred payment arrangements, including LIFT. (Direct-WW-Colton-114 to 118.)_

Non-Settling Parties object to the Settlement Agreement because it fails to include these reforms to the LIFT program, which would provide immediate relief to ratepayers in the face of Applicants' extremely high requests. The failure to include these provisions again adversely affects constituent and members of the Non-Settling parties who would benefit from changes to LIFT.

Third, the Settlement Agreement incorporates a collaborative among Applicants, the Citizens Utility Board ("CUB"), and other interested groups to review LIFT and "other proposals regarding eligibility for existing low-income assistance for electric customers, including potential Percentage of Income Payment ('PIPP') Pilot," with a commitment to "seek PSCW approval for a PIPP Pilot by the end of 2022 or 2023." (Ex.-WEPCO WG-Settlement Agreement, Ex. A at 2.) However, this provision is again in conflict with Walnut Way's prior testimony and suffers from additional problems. Witness Colton had recommended a similar collaborative to develop an affordability rate, but one with more structure, that funded participation of interested groups in an amount of up to $250,000 to hire legal and technical support, and that recognizes the over-arching concept that energy bills of low-income customers should be capped at 6% of income. (Direct-WW-Colton-r-47

to 51, 68 to 69.)[3] The Settlement Agreement neither acknowledges this testimony nor adopts these recommendations, and the Non-Settling parties accordingly object to the absence of these provisions.

The collaborative also suffers from new problems, including those identified in the settlement testimony of Mr. Colton, filed herewith. These include: 1) it gives Applicants the final say over whatever is proposed to the Commission rather than requiring a joint petition or proposal; 2) the Settlement Agreement is ambiguous as to the source of funding for the pilot and could be interpreted to mean it just redistributes funding from existing programs to the pilot; 3) the Settlement Agreement does not define the term "low income," which should include populations beyond those who currently receive energy assistance; 4) the Settlement Agreement lacks framing as to how much energy burden is too much, which as before should be 6%, or 4% for non-heating customers (SA-Direct-WW-Colton-6 to 7); 5) the program to be submitted by the end of 2023 lacks any parameters, and should at least specify a participation level of 5,000 for reason Mr. Colton explains; 6) the Settlement Agreement does not address or incorporate the critical issue of arrearage forgiveness; 7) the Settlement Agreement should include, but lacks, governance features such as an oversight panel for the eventual pilot program; and 8) the Settlement Agreement should include, but lacks, a third-party evaluator of the pilot program. (SA-Direct-WW-Colton-3 to 11.)

Mr. Butts raises similar concerns, i.e. that the Settlement Agreement's proposed pilot lacks intentionality or urgency, and that it leaves We Energies too free to decide on process and outcomes. (SA-Direct-WW-Butts-6 to 7.) The lack of funding for stakeholders is also

[3] Walnut Way's testimony also identified a number of different models that the collaborative could review, including a PIPP, income-based discount programs, and credit programs. (Direct-WW-Colton-r-65 to 68.)

problematic: "Given the resources necessary to meaningfully participate in any collaborative process, this lack of funding will serve to perpetuate inequities by burdening community voices with the least access to this process." (*Id*. at 7.) The Non-Settling Parties object to the Settlement Agreement due to all of these referenced deficiencies and are adversely affected by their absence for the reasons previously identified.

B. Objections to Omissions

What is as important are the terms that the Settlement Agreement does ***not*** include, and that the Non-Settling Parties would have pushed for had they been included in discussions.

For example, as noted in Clean Wisconsin's undisputed testimony in this docket, "[e]nergy efficiency is the least-cost option to assist customers in lowering their electricity bills. Customers who install higher efficiency measures reduce their energy consumption and thereby reduce their bills." (Direct-CW-Lane-11). Wisconsin's statewide energy efficiency program, Focus on Energy, has resulted in annual verified gross electricity savings of between 442 GWh to approximately 558 GWh (Ex.-CW-Lane-11). In 2021, Focus programs showed a 2.35 benefit-cost ratio based on the Modified Total Resource Cost (TRC) test (Ex.-CW-Lane-7). This means that for every dollar invested in energy efficiency, $2.35 of benefits are created. (*Id*.) Mr. Colton similarly testified for Walnut Way that existing energy efficiency programs currently underserve low-income customers, but that these customers—and the Applicants themselves—would significantly benefit from greater access to efficiency. (Direct-WW-Colton-r-71 to 98.)

Clean Wisconsin proposed three voluntary utility energy efficiency programs in this

case, none of which required direct implementation by Applicants. In discussion with Clean Wisconsin, Applicants argued that the utility "isn't prepared to implement its own efficiency programs" which was not what Clean Wisconsin had proposed, raising the question of whether Applicants had bothered to read the testimony. Similarly, Applicants claimed (and continued to claim after being corrected on the record) that Clean Wisconsin's proposed expenditures for energy efficiency pilots exceeded Applicants' current contributions to Focus on Energy; that is simply not true (Surrebuttal-CW-Lane-2). Because the settlement process and proposed agreement ignored and mischaracterized the only proposal for the least-cost measure to reduce customer bills, the settlement agreement adversely affects Clean Wisconsin's members.

The Settlement Agreement similarly failed to include an energy efficiency pilot that would specifically benefit low-income customers, as Mr. Colton had recommended based on a similar program in Michigan. (Direct-WW-Colton-r-87 to 91.) He also testified that, in lieu of or in addition energy efficiency, the same neighborhoods that would benefit from the geo-targeted energy efficiency pilot he proposed would also benefit from investments in electrification or renewable energy. (Direct-WW-Colton-r-89, n.85.) The lack of any energy usage reduction project adversely affects low-income customers and Walnut Way.

The Settlement Agreement also bypasses Walnut Way's extensive testimony regarding changes to service rules, which again would provide immediate relief to customers. These changes would have reformed late fees, deferred payment arrangements, due dates, collections, and Applicants' flawed risk assessment program for evaluating potential customer non-payment. (*E.g.*, Direct-WW-Colton-r-107 to 133.) The need for

them is further reinforced by public comments, such as those who need assistance but are not currently getting it, who are barely making ends meet and are burdened by high bills, and who have experienced things like high charges for reconnection after disconnection due to non-payment. (*E.g.*, Comment of Zach Johnson, Milwaukee, PSC Ref#451297; Comment of Mary Radzimowski, Milwaukee, PSC Ref.#451297; Comment of Kaleigh Schmidt, Milwaukee, PSC Ref.#450894; Comment of Fredell Frazier, Milwaukee, PSC Ref.#449531.) Even CUB, a Settling Party, agreed in its testimony that "Mr. Colton's recommendations on customer protections related to service disconnection and reconnection should be strongly considered by the Commission," and that he was supportive of all of Mr. Colton's suggestions generally. (Rebuttal-CUB-Singletary-6.) It is unclear why none of these suggestions were included in the Settlement Agreement, but their omission will adversely affect the Non-Settling Parties and those that they serve. The Non-Settling Parties accordingly object.

II. The Settlement Agreement Does Not Meet the Criteria in Wis. Stat. § 196.026(7).

As presented, the Settlement Agreement does not meet the criteria in Wis. Stat. § 196.026(7) and should not be approved.

A. *The Public Interest Is Not Adequately Represented by the Parties Who Entered the Settlement Agreement*.

The Settlement Agreement fails to meet the criteria in Wis. Stat. § 196.026(7)(b), because the public interest is not adequately represented by the parties who entered the settlement agreement.

A Settlement Agreement that represents the public interest should have included Walnut Way, a resident-led organization whose mission is to sustain transformation and

create an economically diverse community through community engagement, environmental stewardship, and economic development. (SA-Direct-WW-Butts-2.) It does so not just in Lindsay Heights, where it is located, but eliminates barriers to wellness, work, and wealth across the City of Milwaukee. (*Id*.) Walnut Way is the only intervenor that exclusively represents the interests of low income, minority, and energy-burdened customers. As explained in Walnut Way's initial request to intervene, almost 90% of the Lindsay Heights residents are Black; almost half live in poverty and the median income is less than half the national average. (Request to Intervene at 1, PSC Ref.#439048.) Walnut Way has undertaken initiatives to remedy these problems and has expertise in community development, wellness, workforce issues, and environmental and energy innovation. (*Id*. at 2.) It also works with other community partners to advance environmental justice, including by assessing energy burden and access to renewable energy. (*Id*.)

While Walnut Way is located on the north side of Milwaukee, the issues it advances are common to low-income ratepayers throughout Applicants' service territory. Four out of the five largest cities in Applicants' service territories (Milwaukee, Kenosha, Racine, and Waukesha) have average household incomes at or below 100% of the federal poverty level. (Direct-WW-Colton-r-1 to 3, 16.) The record reflects that 91% of residents in the Milwaukee metro area's high-burden neighborhoods are Black or other racial minorities, and that this number is 67% for Milwaukee County. (*Id*. at 24; *see also* Ex.-WW-Colton-3.) The Commission has received comments from customers in numerous communities the Applicants serve expressing concern that they cannot afford the increase due to their current limited income, and even struggle to pay their current bills. These communities include Menasha ("I'm retired on a fixed income . . . I can't afford a double digit rate increase for

gas and electric. Especially now during this period of already high inflation," PSC Ref#450727), Caledonia ("I cannot afford the current energy prices ! I have not gotten a raise at work [in] 3 years! I have 3 kids[,] if we energies raises the rates we all have to freeze this winter," PSC Ref.#450149), Kenosha (PSC Ref.#448016), and Franklin ("Should we buy less food so we can pay the energy bill?", PSC Ref.#450325), among others. Walnut Way's participation benefits these customers, too.

Neither do the settling parties represent the interests of Clean Wisconsin's members and supporters. Clean Wisconsin was created on Earth Day in 1970 as Wisconsin's Environmental Decade, and its mission is to protect Wisconsin's clean water, clean air, and natural heritage. For over fifty years, Clean Wisconsin has worked with local and state leaders to drive environmental policy changes, defended Wisconsin's environment through strong, effective litigation, and kept its members and the public connected to information and opportunities to make their voices heard on critical environmental issues. None of the settling parties are environmental advocacy organizations.

The only settling party that arguably comes close to representing Walnut Way's interests is the consumer advocate CUB. Yet even CUB concedes that it does not adequately represent the same interests as Walnut Way. In reacting to the testimony of Walnut Way expert Roger Colton, CUB witness Corey Singletary stated as follows:

> First I must state that I believe that Walnut Way's participation in this proceeding has already proven to be extremely valuable. While CUB represents all of Wisconsin's public utility customers, including those served by Walnut Way, as most know, CUB is highly resource constrained as statewide utility consumer advocate offices go. As such CUB is often limited in its ability to examine, adequately and in detail, every issue that affects the customers it serves. In particular, low-to-moderate (LMI) or economically distressed communities and the particular challenges they face related to public utility service is a blind spot for us. . . . I believe that the on-the-ground perspective provided by Walnut Way should prove invaluable to the

> Commission as it considers issues such as equity, affordability, and whether the interests of Applicants' customers are fairly balanced against the interests of the shareholders.

(Rebuttal-CUB-Singletary-5 to 6.) Mr. Singletary also noted that Mr. Colton's testimony for Walnut Way comes from "a specific perspective CUB currently lacks," and encouraged the Commission to consider Mr. Colton's testimony. (*Id.* at 6.) While Walnut Way appreciates CUB's prior work, CUB cannot alone address the issues presented by this docket.

Similarly, while Clean Wisconsin shares some of CUB's interests, CUB's organizational mission is very different from Clean Wisconsin's. For example, when Clean Wisconsin advocates increased investments in energy efficiency, it does so not only because energy efficiency saves money, but because it reduces the need to construct and operate air- and water-polluting fossil generators that also contribute to climate change. In this docket, neither CUB nor any of the other settling parties represent environmental protection interests.

RENEW also does not represent the interests of Walnut Way in this docket; moreover, its "asks" in this proceeding were limited, focusing on issues like solar metering (*e.g.*, Direct-RENEW-Vickerman-2 to 3) and the reduced fixed customer charge, discussed below. As Walnut Way's expert testified, however, low-income customers frequently cannot afford to install solar panels or invest in renewables due to the large up-front costs. (Direct-WW-Colton-r-71 to 87.)

Although Clean Wisconsin shares RENEW Wisconsin's goal of increasing renewable energy in Wisconsin, RENEW's mission statement does not mention environmental protection:

> Our Mission is to lead and accelerate the transformation to Wisconsin's renewable energy future through advocacy, education, and collaboration.

(RENEW Wisconsin website, retrieved Nov. 2, 2022).

Neither CUB nor RENEW fully represent the public interest in this docket.

Other settling parties include those representing large customers, like the Wisconsin Industrial Energy Group ("WIEG"), Walmart, and Roundy's. It is no wonder that these parties entered the Settlement Agreement, because they received benefits such as changes to the renewable energy rider, a high load factor credit, changes to tariffs, and reduced transformer capacity charges. (*E.g.*, Ex.-WEPCO WG-Settlement Agreement, Ex. A at 3-4.) But these parties do not represent LMI residential customers or environmental interests; notably, the Settlement Agreement did not include similar programs that could have benefitted residential customers, like efficiency or renewable programs. (Direct-WW-Colton-r-7 to 22.) Nor do the labor unions and other groups that participated.

In short, the Settling Parties are the usual suspects in Commission proceedings. However, if only the usual suspects ever participate in settlements and Commission proceedings, nothing will ever change. And as the record in this docket shows, something must change to address energy burdens and unfair treatment of low-income residential customers. Wis. Stat. § 196.026(7).

B. *The Settlement Agreement Does Not Represent a Fair and Reasonable Resolution to the Docket, is Not Supported by Substantial Evidence on the Record as a Whole, and Does Not Comply with Applicable Law, Including that Any Rates Resulting From the Settlement Agreement are Just and Reasonable*.

The Settlement Agreement does not meet the criteria in Wis. Stat. § 196.026(7)(b) and (c) as written.

The Settlement Agreement does not represent a fair and reasonable resolution to the docket. Although the Settlement Agreement contemplates some bill reduction measures, the end result after settlement is that Applicants have now increased the proposed residential

rate hike so that instead of a $6.00 monthly bill increase, they now propose a monthly bill increase of $14.61 for residential electric customers. This means that the proposed Settlement Agreement was negotiated using a set of assumptions that have since changed dramatically. Notably, Applicant witness Nelson did not change his proposed revenue allocation—which is responsible for most of the larger residential increase—until Monday, October 3, 2022, the same day the Settlement Agreement was filed and two days before the party hearing. This fact alone calls into question the reasonableness of the agreement.

At the same time they propose more than doubling residential electric bills, Applicants have refused to consider implementing additional bill reduction and energy efficiency programs that would provide much more significant and sustainable energy and bill savings than other elements of the settlement agreement, as described in Section I.A. and I.B., above. Applicants now seek huge increases with little to nothing to help residential customers mitigate those increases by reducing demand or offering new programs—though industrial and commercial customers fare much better.

Other aspects of how the Settlement Agreement was entered into also undermine the conclusion that is a fair and reasonable resolution to this docket. As Mr. Butts testifies, Walnut Way was not included in the settlement process or offered the opportunity to contribute to it, but instead had one short meeting with the Applicants and was later presented with the final agreement and asked whether it would object. (SA-Direct-WW-Butts-4.) Clean Wisconsin had a similar experience. Walnut Way's treatment during the settlement process is unfortunately consistent with its treatment throughout this case, where Applicants have dismissed or minimized Walnut Way's testimony and briefing under the guise of not having time to address it. (*Id*. at 5-6.) This claim does not ring true where

Applicants found time to draft pages and pages of testimony and exhibits responding to other intervenors on highly technical issues like ROE and rate design. The Applicants' actions in this regard represent a failure of equity—not just because Walnut Way has been treated differently than other intervenors, but because it has resulted in an inadequate utility response to the issue of energy burden and the equity issues that energy burden presents for many residential customers. (*Id*. at 5 to 6.) Had We Energies been more inclusive during the settlement and rate-making process, the Settlement Agreement might have included more and better solutions for these customers. (*Id*. at 6.) Indeed, Applicants' witness Mr. Eidukas acknowledges that Walnut Way presents valid concerns and ideas but does not specify which ones. (*E.g.*, Rebuttal-WEPCO WG-Eidukas-8:6-7.)

To this extent, the Settlement Agreement is not supported by substantial evidence on the record as a whole. Mr. Colton's testimony about the problem of energy burden, disparate impact on communities of color, and barriers to efficiency programs is entirely unrebutted and undisputed, as is his testimony concerning solutions (except for Applicants' pushback on paying $250,000 to support stakeholder participation in the low-income rate collaborative). Much of Ms. Lane's testimony regarding efficiency programs is also undisputed. Applicants did not engage with this testimony, except to say that the PBR workshops being conducted by the Commission should be allowed to conclude before considering any possible action---despite the Commission having awarded intervenor compensation to Clean Wisconsin so that PBR *could be* considered in the rate case

Moreover, the record as a whole now shows that Applicants' proposed rate increases for residential customers are now nearly twice what they were at the time the Settlement Agreement for electric, with smaller increases for gas. The Applicants do not and cannot

dispute the truth of these changed circumstances and they do little to justify them. The record—including the testimony and exhibits of Mr. Colton, other intervenor witnesses such as Mr. Singletary, and the numerous public comments—does not support a settlement that permits a $14.61/month increase for electric and $7-8/month for gas, on top of existing rates, expected $20-30/month spikes in natural gas, and inflation.

Even the settling parties might agree, now that Applicants have finally shown their math. For example, while the Non-Settling parties appreciate that the Settlement Agreement includes RENEW's proposed reduction in fixed monthly fees from $16 to $15 for Applicants' electric customers (Ex.-WEPCO WG-Settlement Agreement, Ex. A at 2-3), the final product may not have been RENEW's desired result. Specifically, the $1/month decrease actually results in a $0.06/month *increase* for customers with average energy use. (Ex.-WW-Colton-SA1.) But RENEW and other settling parties would have had no way of knowing this at the time of the Settlement Agreement, since these numbers were not available then.

Finally, the Settlement Agreement does not comply with applicable law because rates resulting from the settlement agreement are not just and reasonable under Wis. Stat. §196.026(7)(c). As explained extensively throughout the testimonies, exhibits, and briefs of Walnut Way, Clean Wisconsin, and others, the increases alone are not affordable for energy burdened customers, much less those increases combined with other costs residential customers must pay. (*E.g.*, SA-Direct-WW-Colton-2 to 3.) This assumes ROE of 9.8% for electric and 10%/10.2% for gas, and that Applicants' desired revenue allocation is accepted, according to the Applicants' most recent calculations. (SA-Direct-WEPCO/WG-Eidukas-

9; Ex.-WEPCO WG-Eidukas-SA2, Schedule 11.) Applicants have not put forth any alternative numbers with different assumptions. As stated by Mr. Colton:

> The proposed terms of the Non-Unanimous Settlement should, as written, be rejected as unreasonable. By its terms, the Non-Unanimous Settlement effectively dismisses the recommendations advanced in my Direct Testimony other than my recommendation for a collaborative process to develop a low-income rate. At the same time that increased rates are accepted that will increase low-income energy burdens by nearly 2% of income –with the increase alone representing from one-half to two-thirds of electric burdens that are deemed to be affordable—the Non-Unanimous Settlement affirmatively decides not to provide needed immediate relief to the tens of thousands of low-income customers who will be harmed by the rate increase. Despite WEPCO's professed "sensitivity" to the "challenges" of its low-income customers, the Non-Unanimous Settlement proposes to increase annual bills by nearly $180, while at the same time also choosing to continue the imposition of unreasonable late payment charges, the imposition of unreasonable payment plan terms, the unreasonable pursuit of disconnections even while someone is applying for energy assistance, and the unreasonable limitation of arrearage relief to an artificially small minority of low-income customers (i.e., those who receive energy assistance).

(SA-Direct-WW-Colton-11 to 12.)

To this last point, Applicants have not shown the Settlement Agreement or their proposed increase complies with any Commission rules in place to protect low-income customers, such as those in Wis. Admin. Code ch. PSC 113. In fact, Applicants have not addressed compliance with any legal standards at all. (*See* SA-Direct-WEPCO/WG-Eidukas.) The reforms recommended in Mr. Colton's testimony were intended to ensure compliance with rules in PSC 113, such as those for deferred payment agreements in PSC 113.0404. (Direct-WW-Colton-r-113 to 114.) The Settlement Agreement, as written, does not do so.

C. If the Commission Approves the Agreement, it Should Only Do So With Significant Modifications Pursuant to Wis. Stat. § 196.026(8).

The Commission is empowered to approve, reject, or modify a Settlement

Agreement. If the Commission is inclined to approve this agreement, it should only do so with substantial modifications that will help protect the public interest.

As an initial matter, the Settlement Agreement provides that it settles all issues in the case aside from ROE and revenue allocation. However, it does not address certain issues at all, like changes to service rules. It is unclear if the settling parties implicitly settled these issues by not including them in the settlement (acting as a rejection) or if they are considered outside of the settlement process and can be decided by the Commission in the normal course. Regardless, the Commission should be able to decide them one way or the other.

To more closely align with just and reasonable rates, the Commission should not approve the settlement without the reforms described above. These include changes to LIFT, additional programming for LMI customers, and changes to service rules, all to provide more immediate relief from the Applicants' proposed changes. *See* Section I, *supra*. The Commission should also condition approval of the proposed low-income rate/PIPP on the changes in Mr. Colton's testimonies, including the changes in his direct that were not incorporated in the Settlement Agreement in the first place (such as the structured approach he identified for the collaborative and funding for stakeholders to participate) and the changes he and Mr. Butts propose in their testimony filed herewith, to correct the ambiguities and deficiencies in the Settlement Agreement as drafted. (*See* SA-Direct-WW-Colton-11 to 12; SA-Direct-WW-Butts-6.) These include:

- The requirement that the collaborative result in a joint proposal to the Commission, or where agreement cannot be reached, identification of disputed issues
- A recognition that the PIPP would be in addition to existing programs and would result in a proposal any changes to these existing programs

- The PIPP should not be limited just to those receiving energy assistance (Applicants' current definition of low-income customers), but would have expanded eligibility;
- A definition of what level of income burden is deemed affordable for electric service, no greater than 6%;
- A *minimum* participation level for the pilot of 5,000 residential customers, to account for data attrition and to allow adequate sub-populations to be studied
- A mechanism for addressing and forgiving existing arrears for those who wish to join the pilot
- A multi-stakeholder Project Advisory Panel that oversees operation of the pilot
- A third-party evaluator of the pilot, selected through mutual agreement of members of the Project Advisory Panel

(SA-Direct-WW-Colton-3 to 11.) Without these changes, the Settlement Agreement gives Applicants too much power in the process, does not ensure equity, will not necessarily result in a product which will provide relief to ratepayers who so desperately need it, and is accordingly unreasonable.

CONCLUSION

For all of the foregoing reasons, Non-Settling Parties object to the settlement, which does not meet the statutory criteria for approval. The Non-Settling Parties ask that if the Commission is inclined to approve it, it should only do so with the reforms described above and elsewhere in this docket.

Dated this 3rd day of November, 2022.

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